Chinese antitrust regulators have not historically been known to engage in aggressive investigations. Things may be beginning to change. Last year, both Qualcomm and IDC were put under the microscope by PRC National Development and Reform Commission ("NDRC") officials using tactics more commonly associated with antitrust regulators in the United States and Europe. Here we will describe what happened.

Qualcomm experienced a classic “dawn raid” in November 2013, when NDRC's special investigation squad swooped upon Qualcomm's Shanghai and Beijing offices simultaneously, with little or no prior warning, in a seamless, well-orchestrated operation. NDRC officials reportedly seized electronic documents (including pricing and marketing information) and compelled management to provide detailed answers to questions about Qualcomm's chip pricing and involvement in foreign anti-trust investigations. The NDRC has apparently had Qualcomm in its sights since receiving allegations that Qualcomm had engaged in excessive and discriminatory pricing and imposed unreasonable trade conditions on patent licenses and phone chip sales. Qualcomm could be considered particularly vulnerable to such allegations as it is generally
assumed to be market-dominant in the wireless communication “standard essential patents” market.

IDC, in contrast, appeared insulated from such an investigation due to its lack of physical presence in China. But NDRC officials were not deterred. The NDRC filed a case in June 2013, alleging that IDC had abused its market dominance in the telecommunications industry by imposing excessive royalties, and invited IDC senior executives to China for "discussions." IDC, to its credit, cooperated with the NDRC investigation, and in due course applied for a suspension to the investigation based on a series of voluntary commitments to refrain from charging excessive royalties, bundling essential patents, and requiring mandatory cross-licencing free of charge.

The new threat of aggressive antitrust enforcement is not limited to the NDRC, which is responsible for pricing-related issues. The State Administration for Industry and Commerce ("SAIC") earlier in 2013 concluded what, to date, can only be described as the "mother" of Chinese anti-trust investigations against Tetrapak. The SAIC reportedly raided two offices of Tetrapak in Shanghai and Kunshan on the same day, 18 April, 2013. During the course of the Tetrapak investigation, the SAIC squad interviewed heads of departments and relevant employees and collected more than 30,000 emails, internal meeting minutes, numerous sales contracts, and other Tetrapak books and records. SAIC investigators even seized deleted emails, which provided the SAIC with important evidence to build its case against Tetrapak.

“Dawn raids” and similar aggressive investigatory tactics are no longer solely a Western phenomenon. They have now come to China and will increase in frequency over time. Companies should analyse whether or not they are at risk of investigation and take precautions through planning and training to ensure that they can respond appropriately when raids occur.
Dorsey is a business law firm, applying a business perspective to clients' needs. We make it our...

Related Posts

- US China Trade War Developments - Trade, IP, Antitrust and Securities
- US China Trade War – Default Dangers, Trans Pacific Partnership In Jeopardy, Trade, Customs Antitrust And Securities
- US China Trade War – Reagan Predicted It, Trade, Customs, 337/Patents, US China Antitrust, And Securities

Latest Posts

- China: A New Dawn in Anti-Trust
- This Week In Securities Litigation (Week ending April 17, 2014)

Follow Dorsey & Whitney LLP:

- LinkedIn
- Facebook
- Twitter
- Home
- Search
Get Legal Updates by Email

☑ Antitrust & Trade Regulation
☑ Morning Brief
☐ Corporate Law Report
☐ Media Brief
☐ Weekly Digest

Read latest updates from leading lawyers, delivered to your inbox.

Your Email Address

I am a/n [select one]

Send me updates »